Supreme Court, U.S.
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No. 01-1752

In The
Supreme Court of the United States

MICHAEL COMFORT, Acting District Director,
Immigration and Naturalization Service,

Petitioner,

v.

BALTAZAR SOSA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

MEMORANDUM OF RESPONDENT

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MEMORANDUM OF RESPONDENT

Respondent hereby submits this response to the government's petition for a writ of certiorari:

1. Respondent agrees with the statement as set forth in the government's petition, with the following clarifications. First, since issuance of the court of appeals' opinion, respondent has submitted an application for a waiver of deportation under former 8 U.S.C. § 1182(c) (1994) (repealed 1996). Pursuant to *INS v. St. Cyr*, 533 U.S. 289, 326 (2001), aliens like the respondent who pled guilty before 1996 remain eligible for relief under Section 1182(c). Respondent's hearing on the Section 1182(c) application is currently scheduled for February 25, 2003. If the application is granted, respondent's challenge to mandatory detention will be rendered moot. Second, the court of appeals notes that respondent filed a petition in state court to change his sentence to one which would render him eligible for discretionary relief from deportation. Pet. App. at 3a. The government states that the state court "did not grant that petition." Pet. Br. at 5 n.2. It is counsel for respondent's understanding that respondent's state court petition has not been finally adjudicated and that it has been neither granted nor denied.

2. The government does not seek plenary review of the court of appeals' decision, but asks that the petition be held pending the Court's disposition of the government's petitions in *Demore v. Kim* (No. 01-1491) and *Elwood v. Radoncic* (No. 01-1459). On June 28, 2002, the Court granted the petition in *Kim*. In light of the Court's grant of plenary review in *Kim*, Respondent does not oppose the

government's request that the Court dispose of this case in accordance with the final disposition of *Kim*.

Respectfully submitted,

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